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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/560,250	06/22/2006	Glen R. Nemerow	5410-007 NATL	5019

7590 11/14/2008
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EXAMINER

SAJJADI, FERAYDOUN GHOTB

ART UNIT	PAPER NUMBER
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1633

MAIL DATE	DELIVERY MODE
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11/14/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/560,250

Applicant(s)

NEMEROW ET AL.

Examiner

FEREYDOUN G. SAJJADI

Art Unit

1633

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 13 October 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 4 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 58-69-71 and 80-82.
Claim(s) withdrawn from consideration: 1-7, 10-54, 57, 59-68 and 72-79.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

/Fereydoun G Sajjadi/
Examiner, Art Unit 1633

Continuation of 11, does NOT place the application in condition for allowance because: Applicants have amended base claim 58 to introduce new limitations from claims 69-71. While the limitations of claims 69-71 have been previously searched, the presence of said limitations in base claim 58 alters the scope of the claim, especially in relation to dependent claims 69 and 80-82, necessitating further consideration and/or search, and likely the rejection of claims 58 and 80-82 over a new combination of references. Accordingly, the proposed claim amendments have not been entered. To the extent that Applicants' arguments may be pertinent to the previous rejection based on the combination of claims 58 and 69-71, they are addressed as follows:

Claims 58 and 69-71 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Vigne et al. (U.S. Patent No.: 6,455,314; effective filing date: Aug. 27, 1998), in view of Hallenbeck et al. (U.S. Patent No: 2002/0137213; effective filing date June 2, 2000). Applicants argue that the references of Vigne et al. and Hallenbeck et al. alone or in combination do not teach all the elements of amended claim 58. Applicants' arguments have been fully considered, but are not found persuasive. Applicants have failed to specifically and distinctly identify which particular elements of base claim 58 are allegedly missing from the combined teaching of the references. Vigne et al. describe targeted adenovirus vectors for delivery of heterologous genes, wherein modifications of the internal sites of the adenovirus fiber protein that include short targeting peptides fused to the C-terminus of the fiber protein, or the fiber H1 loop (knob) target the modified adenoparticles to specific cell types (Title and Abstract). Additionally disclosing substitution or replacement of the Ad5 shaft with Ad3, comprising a modification in the last full repeat of the fiber shaft (column 33). Vigne et al. further describe replacement of a part of the fiber 1-11 loop (knob) with a ligand peptide or targeting sequence, that impair the native entry pathway and provide an additional, CAR-independent, pathway of infection." (columns 47 and 48; bridging). Hallenbeck et al. describe adenovirus particles mutated in their fiber proteins that no longer bind to their natural cellular receptor and can be retargeted to a specific cell type through the addition of a ligand to the virus capsid (Abstract). Hallenbeck et al. specifically describe adenoviral constructs containing the KOI fiber AB loop mutation (Fig. 9), displaying a diminished interaction with CAR (paragraph [0092]). Adenoviral vectors containing the KOI mutation in conjunction with a ligand targeting moiety are described in Example 3. Thus, the rejection of claims 58 and 69-71 are maintained for reasons of record and the preceding commentary.

Applicants' arguments with regard to the rejections based on the combination of claims 58 and 69; 58 and 69-70; as well as 58 and 80-82 are based on the proposed claim amendments. However, as these claims have not been entered, the arguments are not found to be persuasive.